IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3212 OF 2006
IN
F.A.NO.1659 OF 2006
WITH
F.A.NO.1659 OF 2006

Govindrao Narayanrao
Ghorpade ..Applicant/
Appellant

Vs.

Shankar Bala Mali
& Ors. ..Respondents

Mr.A.K.Abhyankar with Mr.R.S.Patil
Advocate for applicant-appellant
Mr.A.B.Kololgi for T.S.Ingale Advocate for
respondent 2.

CORAM: SMT.RANJANA DESAI &

SMT.V.K.TAHILRAMANI,JJ.

DATE : SEPTEMBER 22, 2006

P.C.

1. The appellant is the original plaintiff, who had filed a suit for possession against 21 defendants. By the impugned order, the suit was dismissed. It appears that the appellant settled the matter with

all the defendants except defendants 1 and 2. Therefore, the appellant has deleted all the defendants except defendants 1 and 2. The instant first appeal is admitted by this Court. In this civil application, the appellant has prayed that pending the hearing and final disposal of the appeal, respondent 2/defendant 2-Chandrakant Ramchandra Shah be restrained by an order of injunction from raising any construction over the suit property either by himself or through any of his agents, servants or attorneys. Respondent 2-Defendant 2 has filed reply to this civil application.

2. We have heard learned counsel appearing for the parties. Mr.Abhyankar, the learned counsel for the appellant contended that during the pendency of the suit, there was an injunction restraining defendant 2 from constructing any structure on the suit property. He submitted that in the circumstances, the same may be continued during the pendency of the First Appeal.

3. The learned counsel for the respondents, on the other hand, submitted that since the suit filed by

the appellant is dismissed, injunction order ought not to be continued. He submitted that the 2nd respondent may be permitted to construct suitable premises for his family's occupation and for conducting a hospital. He submitted that the 2nd respondent is prepared to give an undertaking that in case, the appellant succeeds he will hand over vacant and peaceful possession of the suit property to the appellant by removing entire structure constructed by him.

4. The learned counsel for the appellant has strenuously objected to such permission being granted to respondent 2 to construct any structure on the suit land.

5. We see considerable force in the submission of the learned counsel for respondent 2. Respondent 2 has filed affidavit in this Court. Since the suit filed by the appellant, has been dismissed, we see no reason to continue the injunction order. The undertaking filed by respondent 2 is sufficient to protect the appellant. Hence, we pass the following order:-

ORDER

1. Affidavit dated 4th September, 2006 filed by respondent 2 is taken on record. Undertakings contained in the said affidavit are accepted by this Court. During the pendency of the instant First Appeal, 2nd respondent is permitted to construct the structure on the suit land by obtaining construction permission from the Municipal Council for residential use of his family and for the hospital purpose. He shall not develop the property further for profiteering out of it nor shall he use the premises for business purposes. He shall not allot any portion of the said property to third parties.

2. In the event, the appellant succeeds in the appeal, respondent 2 shall hand over vacant and peaceful possession of the suit property to the appellant by removing entire construction carried

out by him in the suit property.

3. The respondent 2 shall not alienate, transfer or create any third party rights in the suit property in any manner.

4. Hearing of the appeal is expedited.

5. Civil application is disposed of.

[SMT.RANJANA DESAI, J.]

[SMT.V.K.TAHILRAMANI,J.]